STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Commonwealth Edison Company **Proposed general increase in electric rates.**	: : : :	**Docket No. 07-0566** **On Remand**

STAFF OF THE ILLINOIS COMMERCE COMMISSION

REPLY BRIEF ON REMAND

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Staff of the Illinois Commerce Commission ("Staff"), by and through its counsel, pursuant to Section 200.800 of the Rules of Practice (83 Ill. Adm. Code 200.800) of the Illinois Commerce Commission ("Commission"), respectfully submits its Reply Brief on Remand in the above-captioned matter.

I. INTRODUCTION

The Initial Brief on Remand ("Initial Brief" or "IB") of Staff was served on October 26, 2011. The Initial Brief of Commonwealth Edison Company ("ComEd" or "Company"), the Attorney General ("AG") and the Citizens Utility Board ("CUB") (jointly "AG/CUB") and the Illinois Industrial Energy Consumers ("IIEC") were also filed or served on October 26, 2011. Most if not all of the issues raised in ComEd's Initial Brief were addressed in Staff's Initial Brief and/or Staff's prior filings (Staff Motion In Limine ("Motion"), Staff Reply to ComEd's Consolidated Response ("Reply") and Staff Response to ComEd's Petition for Interlocutory Review ("Response")) and/or also

addressed by the AG/CUB in their Initial Brief and/or prior flings in this docket and/or addressed by the IIEC in its Initial Brief. Staff's Reply Brief on Remand responds to all the main arguments raised by ComEd in its Initial Brief.

II. ARGUMENT

A. The Commission must order a refund in this proceeding.

ComEd argues that the Commission's only statutory authority to order refunds is under Section 9-252 and Section 9-252.1 of the PUA. ComEd goes on to argue that the Commission does not possess authority to order a refund of amounts collected consistent with a Commission approved rate. ComEd IB, p. 7. ComEd also argues that because the Appellate Court never used the word "refund" it is improper for the Commission to order a refund in this proceeding. Id, p. 10. ComEd's arguments miss the point.

ComEd completely ignores the language in the Appellate Court's opinion that ComEd charged an illegal rate. The Court found that ComEd's reading of the test-year principles to exclude accumulated depreciation on existing plant during the pro forma period resulted in consistently and unavoidably inflated rate base and an inescapably inaccurate picture of ComEd's finances. Commonwealth Edison Co. v. Illinois Commerce Comm'n, 405 Ill. App.3d 389, 407 ("Commonwealth Edison"). The Appellate Court clearly stated that the Commission abused its discretion in excluding from the rate base the increase in accumulated depreciation of existing plant during the post-test-year period. Once the Appellate Court found the rate approved by the Commission to be illegal, restitution is compelled against ComEd because from that point on it obtained

money without authority and ratepayers have no adequate legal remedy available to them. Independent Voters of Illinois v. Illinois Commerce Comm'n, 117 Ill. 2d 90, 98 (1987) ("IVI").

The only available remedy to take back that money from ComEd and put it back into ratepayers' pockets is for ComEd to pay a refund. Based upon the language contained in the Appellate Court's remand a refund is implied and the Commission must order a refund in this proceeding.

In addition, Staff agrees with the AG/CUB argument stated in their Reply to ComEd's Consolidated Response to Motion in Limine that "the fact that the Appellate Court in this instance did not explicitly invoke the term 'refund' is a red herring." AG/CUB Reply, p. 12. The AG/CUB appropriately argue that in IVI, the Supreme Court upheld the distribution of refunds based upon its previous holding in Illinois Bell Telephone Co. v. Illinois Commerce Commission, 55 Ill.2d 461(1973) ("Bell") even though the Bell decision never specifically invoked the Supreme Court's equitable jurisdiction to fashion a remedy for ratepayers. AG/CUB Reply, p. 12. AG/CUB appropriately state the Supreme Court apparently concluded that the absence of refund language "was irrelevant to the need to provide ratepayers with restitution …" Id.

For all of the above reasons the Commission must order a refund in this proceeding.

B. Ratepayers are the aggrieved party not ComEd's shareholders.

ComEd argues that the facts (the Commission's recent order in ComEd's 2010 Rate Case) show that a refund would be inequitable (ComEd IB, p. 11) and relies upon People v. Illinois Commerce Commission, 148 Ill.2d 348 (1992) ("Hartigan II") to support

its argument. The Commission should reject ComEd's arguments for the following reasons: (1) the aggrieved party is not ComEd and its shareholders its ComEd's ratepayers; (2) consideration of the Commission's order in the recently completed ComEd 2010 Rate Case to reduce the refund would be retroactive ratemaking; and (3) ComEd misconstrues Hartigan II to support its equity argument.

With respect to ComEd's equity argument that a refund would be inequitable because there has been no unjust enrichment of ComEd, that is the same argument that Illinois Bell made in IVI which the Illinois Supreme Court rejected. IVI, 117 Ill.2d at 105. ComEd's argument ignores that IVI provides that once a rate order is set aside on appeal the utility should not continue to benefit from what has been determined to be unlawful portions of a rate increase. Id., at 104. ComEd's equity argument is focused on the wrong party. The focus should be on ComEd's ratepayers not ComEd's shareholders because "the goal of equity is to make the aggrieved party whole." Hartigan II, 148 Ill.2d at 405. Ratepayers are the ones that paid an illegal rate and ComEd and its shareholders were the beneficiaries of that illegal rate. In order to make ratepayers whole, the Commission must order ComEd to pay a refund.

The fact that allegedly supports the Company's equity argument is the Commission's recent order in ComEd's 2010 rate case, Docket No. 10-0467, that according to ComEd demonstrates that ComEd under recovered its costs during the period of excessive rates[1]. However, consideration of the Commission's order in ComEd's 2010 rate case in order to reduce the refund is no different and is just as illegal as considering ComEd's return on equity during the period of excessive rates. The Administrative Law Judge ("ALJ") in her ruling struck ComEd's return on equity

[1] ComEd refers to the period of excessive rates as the putative refund period.

testimony (ALJ Ruling, p.3) and the Commission upheld that ruling on Interlocutory Review. Voting Record, October 5, 2011; Notice of Commission Action, October 6, 2011. Just as considering the return on equity testimony would be retroactive ratemaking so to would be considering the Commission's recent order in ComEd 2010 rate case, because ratemaking is legislative in nature and the Commission can only change rates prospectively not retroactively. IVI, 117 Ill.2d at 104. While the law clearly prohibits refunds when rates are too high and surcharges when rates are too low (Citizens Utilities Co. v. Illinois Commerce Commission, 124 Ill.2d 195, 207 (1988)) ComEd is advocating the Commission do exactly that when it argues a just and reasonable rate for the refund period would have been higher than the invalid rate actually charged and therefore there is no refund. ComEd IB, p. 12. According to ComEd, the just and reasonable rate is the rate determined in Docket No. 10-0467; however, that rate can only be applied on a going forward basis from June 1, 2011 and cannot be applied retroactively to the period September 30, 2010 through May 31, 2011.

ComEd argues that its conclusion that a refund would be improper follows from Hartigan II. ComEd IB, p. 13. ComEd however misconstrues Hartigan II. Citing Hartigan II, ComEd argues that a refund is the difference between the money collected pursuant to the invalid rate and the money that would have been collected pursuant to a just and reasonable rate. According to ComEd, the just and reasonable rate is one that reflects its actual costs during the refund period as determined in Docket No. 10-0467. ComEd IB, p. 13. However, the just and reasonable rate discussed in Hartigan II is the same just and reasonable rate discussed in IVI. ComEd ignores the fact that under IVI which is still good law, the refund "should be comprised of the difference between the

original rates … and the rates that would have been charged if they had been set in accordance with the views expressed in the previous decision …" IVI, p. 105. The "view[ ] expressed in the previous decision is the Second District Appellate Court's conclusion that the rate approved by the Commission in ComEd's 2007 Rate Case was excessive since the Commission excluded as a deduction from rate base the increase in accumulated depreciation of existing plant during the post-test year period. Commonwealth Edison, 405 Ill. App.3d at 420. Not only does ComEd misconstrue Hartigan II, ComEd ignores the fact that in Hartigan II the Court specifically rejected the exact same argument ComEd makes in this proceeding that there must be an offset to the refund for an alleged increase in ComEd's actual operating costs. Hartigan II, 148 Ill.2d at 410.

Finally, to support its argument that it would be inequitable to impose a refund obligation on ComEd, the Company attempts to characterize "the problem identified by the Appellate Court [as] one of timing." ComEd IB, p. 14. ComEd argues it is a timing problem, because ComEd's revenue requirement was miscalculated due to certain costs being recovered in the wrong period. That is not a fair or accurate reading of the Appellate Court's opinion. The Court's opinion is not about costs being recovered in the wrong period. The Court's opinion is about costs not being accounted for at all which led to an overstatement of rate base. As a result the rate base approved by the Commission was inflated as the approved rate base exceeded "the investment value ComEd actually dedicates to utility services" (Commonwealth Edison Co., 405 Ill. App.3d at 405) which led to excessive rates. The Commission should reject ComEd's spin on the Appellate Court's opinion. Staff fails to see the difference between a utility that recovers costs that should never be properly recovered from ratepayers (ComEd

IB, p. 14) and a utility whose revenue requirement is based on an "inflated rate base and an inescapably inaccurate picture of the utility's finances." Commonwealth Edison Co., 405 Ill. App.3d at 407. In both cases, ratepayers have been harmed and are entitled to a refund so that they can be made whole from paying illegal rates.

C. The refund amount should be determined based upon actual pro forma adjustments and actual accumulated depreciation on existing plant through June 30, 2008 not actuals for the third-quarter 2008.

ComEd's position is that the Commission must account for its third-quarter 2008 plant additions in rate base. ComEd IB, p. 16. To support that position, ComEd argues that the plain terms of the remand opinion demand that third-quarter plant additions be included in rate base and that the issue of accumulated depreciation and the issue of ComEd's third quarter 2008 plant additions were intertwined in the Appellate Court's opinion. Id., at 17. Finally, ComEd argues that its third quarter 2008 actual plant additions must be considered. Id., at 19-20. The Commission should reject all of these positions. Staff addressed all of these positions either in its Initial Brief and/or in its prior filings but will respond to these positions again.

ComEd has made the same critical error in reading the Appellate Court's Opinion as the ALJ did with regard to intertwining the issues of accumulated depreciation and pro forma third-quarter plant additions. The ALJ Ruling erroneously stated that "[i]t cannot be, argued by Staff, that considering accumulated depreciation is not retroactive ratemaking, but considering third quarter plant additions is retroactive ratemaking." ALJ Ruling, p. 2. Staff now addresses how the issues were not intertwined by the Appellate Court and are distinct.

The Appellate Court dealt with each issue separately and in a different manner. Regarding accumulated depreciation the Appellate Court found that the Commission abused its discretion in excluding from rate base the increase in accumulated depreciation. Commonwealth Edison, 405 Ill. App.3d at 420. The Court stated that ignoring the decline in embedded plant by ignoring the increase in accumulated depreciation artificially boosted ComEd's rate base in violation of test-year principles. Id., at 407. The Court found that exclusion from rate base to be an abuse of the Commission's discretion. Id., at 420. Yet the Court did not direct the Commission to include third-quarter 2008 plant additions in rate base (Id., at 408) only to allow ComEd the opportunity to request their recovery in rates. Id., at 420. The Court acknowledged that with respect to third-quarter 2008 plant additions the Commission is the finder of fact not the court. Id., at 409. Also, the Court was very clear that it expressed no opinion as to whether third-quarter addition costs should be included in rate base. Id., at 420. Even ComEd acknowledges a difference in the treatment of the third-quarter 2008 plant additions issue and the accumulated depreciation issue when it states that "[t]he Appellate Court understood, however, that it could not direct the Commission to include third-quarter 2008 plant additions in the rate base, because 'the Commission has not had the opportunity [to] make findings of fact regarding [them], and the Commission is the fact-finding body.' *Id*." ComEd IB, p. 17. Clearly these issues were dealt with in a separate distinctive manner by the Appellate Court and are not intertwined as ComEd suggests.

ComEd fails to recognize the difference between how the Appellate Court handled the two issues is significant. When the Commission applies a determination made by a court (i.e. a court determination) that is the result of a statutory authorized

review of a Commission order that is not retroactive ratemaking. IVI, 117 Ill.2d at 105. However, if the Commission makes a ratemaking determination, the Commission determination can only be applied prospectively given that '[t]he Commission is statutorily authorized to change rates and, because ratemaking is legislative in nature, rates can be changed only prospectively." Id., at 104. Because the Commission in this proceeding would be making the determination of whether third-quarter plant additions are or are not known and measurable, that Commission determination can only apply prospectively. To apply it back to the period of excessive rates would be retroactive ratemaking.

If the Commission decides to consider ComEd's third-quarter plant additions which it should not, ComEd argues that its evidence is unrefuted because Staff took no position in the original proceeding as to whether its third-quarter plant additions were known and measurable. ComEd IB, p. 18. ComEd's argument should be rejected since the argument is contrary to the evidence in the record. Staff addressed this issue in its Initial Brief but will respond again. In the original proceeding Staff witness Griffin testified in his direct testimony which was admitted into evidence that ComEd's pro forma adjustments for the third-quarter were not known and measurable given that the additions were not reasonably certain to occur nor were they determinable in amount. Mr. Griffin explained that the Company's budgets showed variances of different degrees which led him to conclude that those budgets could not support ComEd's arguments that the additions were reasonably certain to occur and determinable. Staff Ex. 2.0 Corrected, p. 7. In this remand proceeding ComEd through Ms. Houtsma's testimony and through its Initial Brief has attempted to rewrite Mr. Griffin's testimony. However ComEd's own counsel recognized that Staff offered evidence in the original proceeding

addressing ComEd's third-quarter plant additions. Tr, August 11, 2011, p. 39. Staff IB, pp. 17-18.

Not only does ComEd attempt to rewrite Staff's testimony, ComEd attempts to rewrite the Commission's appellate brief filed in the appeal of the original order for this docket. ComEd claims the statement that "The Commission cannot know what position either the Staff Witnesses or the Commission would take if this issue were to be remanded" means that Staff took no position on the third-quarter plant additions in the original proceeding. ComEd IB, p. 18. ComEd is wrong. ComEd ignores the other statement in the Commission's brief that "it does not appear that the Staff witness agreed with ComEd that the third quarter was known and measurable under 83 Ill. Adm. Code 287.40, since their evidence and the Stipulation (R. vol. 61, C14980-C14984) did not include that additional quarter of pro forma capital additions." Id. If the Commission thought Staff took no position on third-quarter plant additions, the Commission would not have stated that it does not appear that Staff agreed with ComEd that the third-quarter plant additions were known and measurable since the stipulation did not include the third-quarter plant additions. The simple plain meaning of the statement "[t]he Commission cannot know what position either the Staff Witnesses or the Commission would take if this issue were to be remanded" is that the Commission did not know if there was a remand whether Staff would still maintain Mr. Griffin's position from his direct testimony or whether Staff would withdraw it. It is a complete misreading of the Commission's appellate brief to say that brief required new Staff testimony on the third-quarter plant additions.

ComEd argues that the actual third-quarter plant additions must be used since Staff used actuals with respect to pro forma plant additions and when calculating the

roll-forward accumulated depreciation reserve at June 30, 2008. ComEd IB, p. 20. Staff's position is that the refund amount should be based upon actual pro forma adjustments and actual accumulated depreciation on existing plant through June 30, 2008 because the Commission used actuals in the original proceeding to determine the plant additions at June 30, 2008. Staff IB, p. 14. That position is consistent with the Commission's order in Docket No. 83-0537 and 84-0555 (Consolidated) (On Second Remand) (1993 WL 13653472 (Ill.C.C)) which addressed the appropriate information to consider in a remand proceeding whereas the Company's position is not consistent with that order.

In that Order, the Commission addressed the issue of the appropriate refund related to ComEd's then owned Byron 1 nuclear unit. The threshold issue for the Commission was whether ComEd should be able to determine 1989 rates for purposes of determining a refund using data that would not have been available when the Commission would have been determining the 1989 rates. ICC Docket No. 83-0537 and 84-0555 (Consolidated), June 2, 1993, Order, p. 3. ComEd wanted to use actual data from 1990 to make a used and useful determination for a revenue requirement determination for 1989. The Commission concluded that it would be improper to use actual data for 1990 since that data would not have been available to the Commission to consider at the time it was setting 1989 rates. Id., p. 4. In this original proceeding at the time the Commission was making its original determination of what plant additions met the known and measureable standard, ComEd's third quarter 2008 actual plant additions were not available. The only information that was available for the third-quarter was ComEd's forecasted third-quarter 2008 plant additions. Accordingly, the Commission should not consider in this remand proceeding ComEd's actual third-

quarter 2008 plant additions as discussed by Ms. Houtsma and Mr. McMahan in their testimony on remand.

Unlike third-quarter 2008 Plant additions, actual data regarding June 30, 2008 plant additions and accumulated depreciation through June 30, 2008 was available at the time the Commission was making its determination in the original proceeding. Staff's refund calculation utilized the following data from the original proceeding's Order dated September 10, 2008: actual gross plant as of June 30, 2008 (Appendix p. 4, line 1, column d), incremental accumulated depreciation on actual plant additions as of June 30, 2008 and accumulated depreciation on existing plant as of December 31, 2006. Appendix, p. 4 line 1, column d. In addition, Staff's refund calculation included the amount of accumulated depreciation on existing plant during the post test year period for the calendar year 2007 and the first six months of 2008. Staff Ex. 22.0, Attachment A, line 4, column c. While the actual amount of post test year period accumulated depreciation on existing plant at June 30, 2008 was not in evidence in the original proceeding, the data was available at the time of the Commission's decision in the original proceeding (September 10, 2008) and is part of the record evidence in this remand proceeding. Staff Group Exhibit 1 (On Remand). Therefore, the refund amount recommended by Staff is appropriate. Staff IB, p. 15.

D. It appears that the Company and Staff have agreement on how to calculate interest on the refund amount

ComEd argues that Staff erred in its proposed calculation of interest on the refund amount in that Staff assumed interest began to accrue on the entire refund

amount on the first day of the period of excessive rates[2]. ComEd IB, p. 21. ComEd therefore argues that it should not be required to pay interest on amounts before the amounts were owed to ratepayers. Id. ComEd's argument that Staff's method was in error is not a fair assessment of Staff's position. The assumption that Mr. Ostrander used in his calculation of interest on the refund amount is one of several that could have been made and is not a per se error. Ms. Houtsma also made an assumption that the refund accrued at the same rate throughout the entire period of excessive rates but like Mr. Ostrander's assumption it was an assumption that did not necessarily represent what actually occurred. However, as Staff stated in its Initial Brief, Staff does not take issue with lines 205-213 of ComEd witness Houtsma's rebuttal testimony regarding the accrual of the refund amount. Staff IB, p. 20. Therefore, ComEd is correct when it states that Staff does not take issue with the method to calculate interest. ComEd IB, p. 21. However, as Staff set forth in its Initial Brief, interest is owed on the refund amount until "all moneys have been paid out to customers. 220 ILCS 5/9-203(f)." Staff IB, p. 20. While ComEd's position is that Section 9-253 does not apply in this proceeding (ComEd IB, p. 22), ComEd's witness Houtsma's rebuttal testimony Ex. 59.1 showing the calculation of interest appears to be consistent with Mr. Ostrander's position (supported by case law and Section 9-253. Staff IB, pp. 19-20.) that interest accrues until all moneys have been paid out to customers. See, ComEd Ex. 59.1. The column "Cumulative Refund incl interest" shows the amount increasing each month until refunds start to be paid back to ratepayers and then declining until all refunds are paid back.

[2] As discussed in a prior footnote, ComEd refers to the period of excessive rates as the "putative refund period".

Based upon the above, Staff and the Company appear to be in agreement on the method to calculate interest on the refund.

E. The period of excessive rates does not end until May 31, 2011.

ComEd argues that the period of excessive rates[3] ends May 23, 2011. ComEd IB, p. 21. ComEd's support for its position is an equity argument. ComEd argues that "[e]quity should not require ComEd to refund amounts collected after the Commission expressly found that ComEd was permitted to charge higher rates." Id., p. 22. ComEd argues that "[c]ustomers should not be able to benefit from the unavoidable lag in implementing a new rate order by continuing to collect a refund from rates the Commission had deemed too low to be just and reasonable." Id. The Commission must reject ComEd's argument for a number of reasons. First, ComEd provides no legal support for its argument. Second its argument is contrary to existing law on the refund formula. As Staff set forth in its Initial Brief, the period of excessive rates is the period of time ComEd charged its customers a rate determined by the Appellate Court to be excessive. Staff IB, p. 11. Under IVI, rates found to be improper are improper from the time the court enters its judgment until new rates take effect. IVI, 117 Ill.2d at 102-103. ComEd's rate was illegal starting September 30, 2011 until the date new rate schedules

[3] As discussed in the prior footnotes ComEd refers to the time period at issue as the putative refund period. Staff refers to the time period as the period of excessive rates. Staff's use of the phrase period of excessive rates is more accurate since during that period of time ComEd was charging a rate determined by the Appellate Court to be excessive. Also the use of phrase "period of excessive rates" avoids any confusion with the subsequent period of time when the refund amount is paid back to ratepayers, which is often referred to as a refund period. To avoid any confusion on these two distinct periods of time, Staff recommends that the Commission adopt Staff's use of the phrase "period of excessive rates" for the time period from September 30, 2010 through May 31, 2011 and refund period for the time period in which refunds are paid back to customers.

were effective (i.e. June 1, 2011). Staff IB, p. 11. Finally, not only is ComEd's argument contrary to IVI, the argument makes no sense. If the Commission adopted ComEd's position it would be saying that a rate charged to customers on May 23, 2011 is illegal but that same rate charged to those same customers the last eight days of May 2011 is not illegal. The refund formula is simple under IVI. As long as utility charges its customers an illegal rate, ratepayers are entitled to get back that illegal amount.

F. The Commission must follow Section 9-253 when determining how the refund should be paid back to customers.

ComEd's argument that Section 9-253 of the Public Utility Act ("PUA") does not apply to this proceeding is based upon a flawed interpretation of the law. ComEd argues that the use of the phrase "overcharge" in Section 9-253 is a reference to Section 9-252.1 (Refunds for Overcharges). ComEd IB, p. 23. ComEd narrowly defines overcharge ("charge of an amount other than the Commission approved rate") to exclude a utility continuing to charge a rate the Appellate Court has determined to be excessive. Id. Given that the term "overcharge" is not defined in Section 9-253, and the fact that the first sentence of Section 9-253 refers to "the Commission or a court" determining that a public utility "has over charged its customers" the Commission can reasonably conclude that when a public utility charges its customers a rate which the Appellate Court finds to be excessive the public utility has overcharged its customers and, accordingly, Section 9-253 applies to that situation.

ComEd's motivation for arguing Section 9-253 of the PUA does not apply in this proceeding apparently is the alleged difficulty, complexity and expense in tracking down former customers which is required under Section 9-253. ComEd IB, p. 23. ComEd even states that "Staff itself recognizes, the process of locating former customers is

'difficult, complex, expensive, and possibly confusing'." ComEd has misinterpreted Staff's testimony. Ms. Harden did not affirmatively state that contacting former customers is "difficult, complex, expensive, and possibly confusing." Id. Ms. Harden in her testimony simply restated ComEd witness Tenorio's proposal to pay refunds to customers who are taking delivery services from ComEd during the period when refunds are made rather than during the period that refunds accrue based upon his explanation that his method is an administrative necessity due to the difficult, complex and expensive task of tracking down and issuing refund checks to each and every former customer of ComEd during the period in which the refund was accrued. Ms. Harden then went on to state that regardless of the "difficult, complex and possibly confusing task of locating former customers" the refund must comply with Section 9-253. Ms. Harden therefore was not taking a position that refunding money to former customers would in fact be difficult, complex and a confusing task. Ms. Harden appropriately offered no testimony on the issue because she has no first hand knowledge of whether what Mr. Tenorio alleges would be true. ComEd Cross Ex. 22 (p. 1, "Ms. Harden is not aware of a final order that was issued by the Commission that applied Section 9-253 of the Public Utility Act.") However, because Section 9-253 of the PUA clearly applies to the refund to be determined in this proceeding, the Commission can simply ignore ComEd's arguments that awarding refunds to former customers provides minimal benefits, is not cost effective and would not be consistent with past Commission practice. ComEd IB, p. 24.

G. Customers should receive their refund as soon as possible and twelve months to do so may be too long.

The Company makes several criticisms of Staff's position on the issue of a minimum refund amount that may result in a refund period of less than a twelve-month period. The Company misinterprets Staff's position. Staff has at no point mentioned that any number should be rounded up to 1.0 cent/kWh or down to zero, nor that any refund should be truncated or cut off. ComEd IB, p. 25. Staff clarified in response to IIEC Data Request 6 that "[d]enying any customer or customer class a refund is not the intent of Ms. Harden's proposal." IIEC Group Cross Ex. 1. Adopting the Company's proposal would stretch the refund period to a twelve-month refund period which unnecessarily delays the Company returning the refund amount to customers over a lengthy period of time.

The Company argues in its Initial Brief that the effect of targeting a monthly refund at no less than 1.0 cent per kWh would be to shrink the period for paying the refund to as few as two months. ComEd IB, p. 25. Staff believes that customers should receive their refunds as soon as possible and that the time period of twelve months may be too long, especially if the monthly amount of the refund is nominal. Staff Ex. 23, p. 5.

Staff also clarified in IIEC Group Cross Ex. 1 in Response to Request IIEC 6 the following:

1. The refund period should be determined by dividing the Company's total kWh usage into the refund amount to set the refund period. The refund period should be adjusted at this step so that the target refund is not less than 1¢/kWh.
2. After the refund period is determined then the total refund amount should be allocated on a delivery class basis, using the same class allocation factors as were approved by the Commission in its 2007 rate case which may result in an average credit of less than, or more than, 1¢/kWh for each customer class.

Staff's recommendation is to adjust the refund period to possibly less than a twelve-month period not to round, truncate or cut off the refund amount for any ComEd customers.

III. CONCLUSION

Staff respectfully requests that the Illinois Commerce Commission approve Staff's recommendations in this docket.

Respectfully submitted,

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